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Deeds--Validity of a Deed Not Signed by All Parties Designated as Grantors

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Since neither solution is wholly satisfactory the legislature may have to be charged with the task of providing a remedy by statute, (A) to extend criminal liability of corporations beyond corporate dissolution and (B) to allow the assets to be followed into the hands of stockholders, the real parties in interest, and require them to respond to the extent of their distributive shares. See *State v. Circuit Court for Milwaukee County*, 184 Wis. 301, 199 N.W. 213 (1924).

M. J. P.

DEEDS—VALIDITY OF A DEED NOT SIGNED BY ALL PARTIES DESIGNATED AS GRANTORS.—In a proceeding brought to partition real estate, reversed on other grounds, *D* entered, as evidence that she was not a proper party to the suit, a deed designating eight grantors but signed by only *D* and four others. Dictum, that such deeds are governed by the rule laid down in *Ely v. Phillips*; that those parties signing a contract prepared for signatures of other persons, to be affixed along with theirs, and intended to be signed by all the parties named in it, are not bound until all have signed it, and incur no obligation, if any of those who were to have signed refuse to do so. *Stalnaker v. Stalnaker*, 80 S.E.2d 878, 883 (W. Va. 1954).

In *Ely v. Phillips*, 89 W. Va. 580, 109 S.E. 808 (1921), the court was not applying real property law to a deed but was considering an undelivered deed as memorandum of an oral contract in a suit for specific performance. The West Virginia Supreme Court of Appeals and other courts have held that an undelivered deed that has been signed is sufficient memorandum of an oral contract to sell real property to remove the contract from the Statute of Frauds. *Moore, Keppel & Co. v. Ward*, 71 W. Va. 393, 76 S.E. 807 (1912); *Parrill v. McKinley*, 9 Gratt. 1 (Va. 1852). The court in the *Ely* case, applying the contract rule that the parties are not bound pointed out that such is the general rule but that there is an exception, that in the absence of evidence showing an intent not to be bound, the parties are bound by their signing the contract. That case turned on the point that the contract was for the sale and removal of timber, the court refusing specific performance on the ground that all cotenants would have to agree to removal before the timber could be removed, holding that this was sufficient to show that those signing did not intend to be bound until all the cotenants signed. Obviously, the *Ely* case is distinguishable as the court there was applying contract law. The authorities are uniform in holding

that the validity of a contract for the sale of real property is judged by the same rules which pertain to contracts generally. 3 AMERICAN LAW OF PROPERTY § 11:13, (Casner ed. 1952).

Recognizing this as a contract rule does not resolve the problem presented in the *Stalnaker* case. A search of the authorities shows that the West Virginia court is the only court that has ever indicated an intention to apply this contract rule to real property deeds, and that that court held such a deed valid and binding on the parties signing in *Adams v. Medsker*, 25 W. Va. 127 (1884). There the decision was handed down on a much more confused state of facts than is found in either the *Ely* or *Stalnaker* case, since some of the designated grantors had not signed the deed, some had, and parties had signed as grantors who were not designated as such in the deed. The court held it was the deed of those designated grantors who had signed, but that it was not the deed of those parties who had signed but were not designated as grantors, nor was it the deed of designated grantors who had not signed. It is to be noted, that this is a direct holding on this issue, in a case where it was contested that the signors were not bound. Also, this was a real property action.

Tiffany, in his treatise on real property, 4 TIFFANY, REAL PROPERTY § 1023 (3d ed. 1939), states the rule that when a conveyance purports to be by more than one grantor but all the grantors do not sign, the signatures of those that do, *followed by delivery by them*, will be sufficient to divest their interest, unless their delivery was conditional upon signature by the others. The West Virginia court, in effect, followed this rule in *Bennett v. Neff*, 130 W. Va. 121, 42 S.E.2d 793 (1947), when they held that the grantor, who had signed, was not bound since those designated as co-grantors, although they were not necessary parties to the deed, had not signed and there was evidence that the grantor did not intend a delivery until they had. The signing by the designated co-grantors was construed as a condition to be met before delivery would be effective, as evidenced by the grantor's and grantee's actions.

It is to be noted that in the *Bennett* case and under the rule that Tiffany sets out the signing by the co-grantors is treated as a possible condition to delivery; however, this condition must be shown by evidence that the grantor did not intend a delivery until all the designated parties had signed. It is an established rule of real property that any deed to transfer title to real estate must be accompanied by a delivery. 26 C.J.S., *Deeds* § 40 (1950). Delivery depends upon the intention of the grantor as manifested by his words and the circumstances surrounding the transaction;

generally without an intent to pass title there is no delivery, although there may be a manual handing over the deed, *Downs v. Downs*, 89 W. Va. 155, 108 S.E. 155 (1921). Obviously there is not too much difference between the rule of the *Bennett* case and the rule of the *Ely* case. Both turn on intent. Delivery of the instrument in either case indicates an intent of the signor to be bound, and under the contract rule would be sufficient to remove the case from the general rule and bring it within the exception.

The problem arises as to the effect either rule has on title search. As pointed out, every deed to transfer title must be accompanied by delivery; therefore, any deed may be invalidated by the grantor proving that there was no intent to pass title, *i.e.*, no delivery or a conditional delivery. The only distinction where the deed is not signed by all the named grantors is that the *possibility* of a conditional delivery is apparent on the face of the deed. It is submitted that this should not be too troublesome; however, it is recommended that such a situation should be noted in the attorney's title report. The West Virginia court has held that signing, sealing, acknowledgment or attestation are presumptive evidence of delivery, *Downs v. Downs*, *supra*; that acknowledgment alone is strong evidence to show delivery, *Delaplain v. Grubb*, 44 W. Va. 612, 30 S.E. 201 (1898); and that recordation is *prima facie* evidence of delivery, *Ferguson v. Bond*, 39 W. Va. 561, 20 S.E. 591 (1894). Therefore, when *any* deed has been signed, acknowledged, and recorded the burden of proof is on the grantor to prove a conditional delivery. The same is true of a deed signed by only a part of the designated grantors. This is further strengthened by W. VA. CODE c. 36, art. 3, § 4 (Michie 1955) which states that any instrument which shows on its face a present intent to pass title, if properly executed and delivered, shall be given effect according to its manifest intent.

In conclusion, it is submitted that, in light of the above decisions, such deeds, when recorded and acknowledged, can be considered as valid and binding as are those deeds in which all parties have signed. The parties who have signed are bound *unless they can prove an intent not to be bound*, thus leaving only the problem of securing conveyance from the grantors who did not sign.

J. W. P.